

# MINUTES OF THE TYNGSBOROUGH CONSERVATION COMMISSION MEETING

**January 10, 2006**

## **Present**

HJ: Henry Jungmann, Chairperson  
RS: Robert Sherburne, Vice Chair  
JZ: Jeanne Zarba

JK: Jeff Kablik  
LG: Lucy Gertz

LC: Lori Capone, Director  
GC: Gloria Clancy, Clerk

## **Absent**

CH: Cynthia Hanna  
BL: Brian Logue, Associate Member

FZ: Frank Zarba

**7:00 Meeting opened** by Henry Jungmann, Chairperson

**7:02 Ann Tinnirella – End of Beech Tree Road:** (Continued from 8/23 & 9/27/05) Conduct a hearing pursuant to an Order of Judgement by the Superior Court, dated May 23, 2005, whereby this matter is remanded to the Conservation Commission for further hearing and determination of the ownership of the affected property. We have another request to continue until March 14. HJ commented that these continuances are getting out of hand. He told the members that he would like to tell the applicant that the board would make a decision at the March meeting. There have been too many continuances. JK said he would only do that if Town Counsel advised us to.

**JK: Motion** to continue this hearing to March 14 at 7:02 P.M. with stipulation that we inform the parties involved that the members would like to make a decision at that meeting.

**LG: 2<sup>nd</sup>**

**Unanimous 5-0.**

## **Other Business:**

- ❖ **Director Determination** for George Trearchis - 78 Willowdale. Mr. Trearchis wants to put up a galvanized post and rail fence along the bordering vegetated wetland adjacent to Willowdale Road to keep out snowmobiles, etc. The area is full of invasive specie plants. LG said she would hope that he would use a fence that would maintain a wildlife corridor. HJ commented that the project should be conditioned to ensure the fence is located outside the right-of-way of Willowdale Road.

**LG: Motion** to accept the Director's Determination for 78 Willowdale Road.

**RS: 2<sup>nd</sup>**

**Unanimous 5-0.**

- ❖ **Director Determination for B&G Realty Trust – 80 Danforth Road.** The applicant would like to change the location of the proposed house and add some additional grading. The closest corner will be 101' as opposed to 130' from the wetland. The tree line would not change and there will be no grading closer than 57' away. The approved silt fence line will stay the same. The members saw no problem with the change.

**JK: Motion** to accept the Director's Determination for 80 Danforth Road.

**JZ: 2<sup>nd</sup>**

**Unanimous 5-0.**

**7:15 Eric Gardner – 72 Progress Avenue – Notice of Intent:** (Map 13, Parcel 46) (Continued from 10/25/05 & 11/8/05) Proposed construction of a commercial building, bituminous pavement, landscaping, grading and associated utilities within the 100 ft buffer zone. Proposed filling of local jurisdictional wetland. The revised plan is still being reviewed and commented on. LC stated we are in receipt of a request to continue this hearing to January 24, 2006.

**JZ: Motion** to continue this hearing to January 24, 2006 at 7:02.

**LG: 2<sup>nd</sup>**

**Unanimous 5-0.**

**Other Business:**

- ❖ Mr. McCarthy – 1 Alden Street – was present to issue a complaint against Ron Vieira – 7 Alden Street. The aerator system that Mr. Vieira uses to prevent the water from freezing around his dock is keeping the whole area from freezing over. He said that a snowmobile went through the thin ice over the weekend. He claims that one cannot skate safely at his waterfront. HJ said that is a safety issue and not within the purview of the Commission's jurisdiction. Mr. McCarthy stated that the Fire Chief and Police Chief have deemed this situation a safety hazard and proclaimed that the Commission created the problem as they permitted the use of the aerator. There was much discussion. Mr. Vieira's pump is not the bubble type that adds air to prevent freezing, but forces a jet stream of water. LC has been to the site and Mr. Vieira has two pumps. He claims one is a backup. He is in violation of his Order of Conditions which permitted one ½ horsepower ice eater. HJ told LC to issue the E.O. and copy the Fire Chief and the Police Chief. HJ asked for comments from the members, then asked if abutters had comments. There were two abutters present that were also concerned about the unsafe ice, but they did not identify themselves or address the Commission.

**7:30 Merrimack Landing Realty Trust – 91 & 95 Middlesex Road – Notice of Intent:** (Map 27, Parcel 2, Lot 0 & 1) (Continued from 11/8/05) Construction of twenty-two, eight unit townhouse style condominiums and apartment buildings, a twenty-four foot wide access drive, parking areas, associated grading, subsurface utilities and associated landscaping, a portion of which is located within 100 feet to a resource area and within the 100 year flood plain. LC said that the engineers are still reviewing and commenting on the new plans for this NOI. Also we have received correspondence from the Natural Heritage Endangered Species Program who has requested a separate filing under MESA to assess potential impacts on four species of dragonflies. LC said they would probably recommend a mowing schedule that will not interfere with the life cycle of the dragonflies. Natural Heritage is allowing the work on the front lot to proceed under the existing Order of Conditions.

**JZ: Motion** to continue this hearing to January 24, 2006 at 7:15 P.M.

**JK: 2<sup>nd</sup>**

**Unanimous 5-0.**

**Other Business:**

- ❖ A complaint had come in that a contractor was moving junk out of the wetland area along Althea Avenue. LC checked it out and Mr. Castonguay has finally hired someone to clean up the area. LC would prefer that the work be done while the ground is frozen to minimize the impact on the wetland. The members agreed it was a good thing that he was finally cleaning the area up, but suggested that LC work with him and the contractor to try to protect the resource area as much as possible.
- ❖ LC had the members sign off on the two enforcement orders they voted on at the last meeting. One was to Tocci Tyngsboro Trust, regarding 76 Frost Road, and the other the Tyngsboro School Department, regarding the retention area at 205 Westford Road. She referred to letters in their folders. She told them that the School Department is considering increasing the size of the overflow pipes.

**7:45 (7:40) Whispering Pines Estates – 39 Lakeview Avenue – Notice of Intent:** (Map 25, Parcel 13, Lot 0) (Continued from 11/8/05) Proposed residential townhouses, roadway, roadway crossing of an intermittent stream, drainage, grading, and associated utilities within the buffer zone. Also, removal of existing septic system, associated grading and construction of a water pump station within the buffer zone. Peter Cricones was present and said that although his engineer has not finished with his answers to the Holmberg & Howe's review letter, he and Richard Kirby of LEC Environmental Consultants Inc. are prepared to go over the Wildlife Habitat Evaluation/Wetland Resource Area Alteration Evaluation/Replication Area Evaluation. LC referred the members to LEC's report dated December 30, 2005 in their folders. After much discussion HJ asked for abutter comments. Michael Abradadis of 33 Lakeview Avenue asked if the study took into consideration the effects of the project on the buffer zone. Richard explained that the way the wetland law is written, there is no mention of alteration thresholds in the buffer zone prompting a habitat study. It only references the alteration thresholds contained in the Bank, Land Under Water body, Bordering Land Subject to Flooding, and Riverfront Area. The report suggested that as part of the replication plan, the applicant will place nesting boxes for birds and bats. LG asked how they plan to enforce a maintenance plan of the boxes. Mr. Cricones said it would be stipulated in the deeds and that we could make a condition that maintenance reports be sent to the Conservation office. LC agreed that it was a thorough evaluation. The members thanked them for an informative presentation.

**JZ: Motion** to continue this hearing until February 14, 2006 at 7:02 P.M.

**RS: 2<sup>nd</sup>**

**Unanimous 5-0.**

**7:50 (8:20) Dennis Page – 28, 32 & 36 Farwell Road – Abbreviated Notice of Resource Area Delineation:** (Map 20 Parcel 53 & Map 19, Parcels 13 & 13A)(Continued from 12/13/05)

Verification of the boundary and an intermittent stream bank and associated bordering vegetated wetland. LC reminded the members of Matt Waterman's presentation at the last meeting. LC had only just received the plan and needed time to verify that all changes had been made to the plan. She has done so and recommended closing the hearing.

**JZ: Motion** to close the hearing.

Minutes 1/10/06 continued

**LG: 2<sup>nd</sup>**

**4 Yeas, 0 Nays, 1 Abstain** (*JK had not been present at the last hearing*) **Motion Carried.**

**JZ: Motion** to issue an Order of Resource Area Delineation for 28, 32 & 36 Farwell Road per plan revised 12/13/05.

**LG: 2<sup>nd</sup>**

**4 Yeas, 0 Nays, 1 Abstain** (*JK had not been present at the last hearing*) **Motion Carried.**

**8:00 (8:25) Linette Rivera – Lot 12 River Bend Road – Notice of Intent:** (Map 20B, Parcel 29, Lot 12) (Continued from 12/13/05) Clear 56' x 12' area for driveway/parking and place 6" or less of pervious crushed stone, clear path to dock area, storage of dock, placement of picnic table and storage container, cut invasive plants, spot treat poison ivy with Ortho Poison Ivy Killer. All work within riverfront area. Some activities located within floodplain. Some of the members had been there for a site visit just yesterday to verify the floodplain stakes. All parties had their engineers present. HJ read from a letter dated January 10, 2006 from Holmberg & Howe, stating it is in their professional opinion that the analysis was complete and the conclusions correct. The stakes showing the location of the 100-year flood plain elevation on the plan submitted is correct. There was discussion. HJ asked for abutter comments. Atty. Lee read a list of the abutter objections. LC said she received and forwarded Atty. Lee's argument to Town Counsel. LC commented that she received the rebuttal from Ms. Rivera's attorney today and forwarded it to Town Counsel. HJ said that we should continue until Town Counsel can comment on the legal aspects.

**JZ: Motion** to continue this hearing until February 14, 2006 at 7:15 P.M.

**LG: 2<sup>nd</sup>**

**Unanimous 5-0.**

**8:15 (8:30) Marc Annese – 190 Massapoag Road – Notice of Intent:** (Map 2, Parcel 24) (Continued from 12/13/05) Raze existing dwelling and construction of a single family house with associated amenities and utilities within the buffer zone of Lake Massapoag and within the Petapawag Area of Critical Environmental Concern. We are in receipt of the dewatering plan requested at the last meeting. Hay bales have been added to the plan as requested. We have heard from Natural Heritage who has deemed that this project will not have an adverse impact on endangered species. LC recommended closing the hearing.

**JZ: Motion** to close the hearing.

**RS: 2<sup>nd</sup>**

**4 Yeas, 0 Nays, 1 Abstain** (*JK had not been present at the last hearing*) **Motion Carried.**

**JZ: Motion** to issue an Order of Conditions for 190 Massapoag Road per plan revised 12/14/05.

**RS: 2<sup>nd</sup>**

**4 Yeas, 0 Nays, 1 Abstain** (*JK had not been present at the last hearing*) **Motion Carried.**

**8:30 (8:35) Rick Lamarre – 8 Industrial Way – Notice of Intent:** (Map 21, Parcel 2E) (Continued from 12/13/05) After the fact filing for pavement of approximately 2700 sq.ft. within the buffer zone. Also seeking direction concerning storage of containers on the property. LC noted that we have received a DEP number with the following comments: *Project appears to be subject to the Stormwater Policy. Please copy MassDEP (referencing File Number) on all calculations, narratives, additional plans, etc forwarded to the Conservation Commission, particularly with regard to meeting the stormwater standards. UNANSWERED QUESTIONS FROM INITIAL*

*EMAIL EXCHANGE: \*Question A.11 is blank - what is the minimum distance between the closest project disturbance (permanent or temporary; any disturbance whatsoever) and the resource area?*

*\*Question D.6 indicates an exemption from the Stormwater Policy.* Attorney Robert Anctil was present to answer questions. He said that the amount of paving involved is so small and it slopes away from the resource area. The applicant is willing to remove it if that is what the Commission decides should be done. There was discussion. It was agreed the asphalt should be removed and replaced with gravel. Atty. Anctil requested a certificate of compliance be issued for the old Order of Conditions (DEP# 309-375) with a note that a new NOI has been filed for additional work.

**JZ: Motion** to close the hearing.

**LG: 2<sup>nd</sup>**

**Unanimous 5-0.**

**JZ: Motion** to issue an Order of Conditions for removal of asphalt from approximately 2700 sq. ft within the buffer zone at 8 Industrial Way with the condition that hay bales and silt fencing be installed prior to beginning work.

**RS: 2<sup>nd</sup>.**

**4 Yeas, 0 Nays, 1 Abstain** (*JK had not been present at the last hearing*) **Motion Carried.**

**JZ: Motion** to issue a Certificate of Compliance for OOC, DEP# 309-375 with a note that a new NOI has been filed for additional work.

**RS: 2<sup>nd</sup>**

**Unanimous 5-0.**

**8:45 Digital Federal Credit Union – 378 Middlesex Road – Notice of Intent:** (Map 12 , Parcel 42) Construction of a one-story 4,722 square foot building with associated parking and site improvements. The site will have access points on Locust Avenue and Middlesex Road. Work will be performed within Riverfront Area, floodplain, and buffer zone of Locust Brook.

**JK: Motion** to waive the reading of the Legal Ad.

**JZ: 2<sup>nd</sup>**

**Unanimous 5-0.**

**JK: Motion** to waive the reading of the Abutter List.

**RS: 2<sup>nd</sup>**

**Unanimous 5-0.**

Steve Auger of Hayner/Swanson, Inc. and Bob Prokop of Wetland Consulting Services represented the applicant. Mr. Auger told LC he will have newly revised plans delivered to her that will incorporate changes that have come about based on Planning Board requests for a second access onto Locust Avenue. Work will be performed within Riverfront Area, floodplain, and buffer zone of Locust Brook. Resource areas on site include bv, land under water body, bank, riverfront, floodplain and associated buffer zones. Floodplain which is presently paved shall be re-vegetated. The only other resource area that will be impacted is the Riverfront Area. As this site is highly disturbed, there was discussion regarding how this project qualifies for redevelopment within the riverfront area. LC recommended setting up a 53 G Account and sending this application out for review by Holmberg & Howe. We are awaiting a DEP# and Stormwater Management Reports.

**JK: Motion** to collect \$2,000 from the applicant and set up a 53G account and send the application to Holmberg and Howe for review.

**JZ: 2<sup>nd</sup>.**

**Unanimous 5-0.**

Minutes 1/10/06 continued

**JK: Motion** to continue this hearing to February 14, 2006 at 7:30 P.M.

**LG: 2<sup>nd</sup>.**

**Unanimous 5-0.**

**Other Business:**

- ❖ Request for a Certificate of Compliance for 11 Worden Road. This was for a new house that performed tree cutting in the buffer zone.

**JZ: Motion** to issue a CC for 11 Worden Road.

**JK: 2<sup>nd</sup>.**

**Unanimous 5-0**

- ❖ The members signed Bills Payable form, the Enforcement Orders for 205 Westford Road and 76 Frost Road. The OOC for 190 Massapoag Rd., ORAD for 28, 32 & 36 Farwell Rd., CC for old OOC and a new OOC for 8 Industrial Way, and the CC for 11 Worden Rd.
- ❖ LC handed out the Commission proposed FY '07 budget for review. LC asked the members to provide comments to her by January 17, 2006.
- ❖ LC asked for interest on upcoming MACC Conference – March 4, and input on preparation of FY '07 Budget and '05 Town Report.

**LG: Motion** to approve the minutes of the Conservation Meeting of 12/13/05.

**JZ: 2<sup>nd</sup>.**

**4 Yeas, 0 Nays, 1 Abstain** (JK abstained). **Motion Carried.**

**JZ: Motion** to adjourn.

**RS: 2<sup>nd</sup>.**

**Unanimous. 5-0**

Meeting adjourned at 9:40 P.M.

Respectfully submitted by Gloria Clancy, Conservation Clerk